



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VII
726 MINNESOTA AVENUE
KANSAS CITY, KANSAS 66101

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RCOM SECTION

Mr. Douglas A. Niedt
Steelcote Manufacturing Company
One Steelcote Square
St. Louis, Missouri 63103-2990

Re: Steelcote Manufacturing Company and Niedt Realty Company
RCRA § 3013 Administrative Order on Consent
EPA Docket No. VII-91-H-0025

Dear Mr. Niedt:

Enclosed is an Administrative Order on Consent (AOC) pertaining to the above-referenced matter. Please sign this as President of both Steelcote Manufacturing Company and Niedt Realty Company where indicated and return it to me by overnight mail for delivery on **Monday, September 30, 1991.**

Upon my receipt of the signed AOC I will present it to the Regional Administrator of EPA Region VII for his approval and signature. After it has been signed by the Regional Administrator it will be filed it with EPA's Regional Hearing Clerk and copies will be forwarded to you and Al McMahon.

If you have any questions please contact me at (913) 551-7503.

Sincerely,

David A. Hoefler
Assistant Regional Counsel

cc: Al McMahon, Esq. (via Federal Express, w/enc:)
Cynthia Hutchison - RCOM



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RCRA RECORDS CENTER

RECYCLE ♻️

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION VII
726 MINNESOTA AVENUE
KANSAS CITY, KANSAS 66101

STEELCOTE MANUFACTURING COMPANY
ST. LOUIS, MISSOURI,

AND

NIEDT REALTY COMPANY
ST. LOUIS, MISSOURI,

Respondents.

Proceeding under Section
3013 of the Resource
Conservation and Recovery Act
OF 1976, as amended,
42 U.S.C. § 6934.

**ADMINISTRATIVE ORDER
ON CONSENT**

Docket No. VII-91-H-0025

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I. PRELIMINARY STATEMENT

1. This Administrative Order on Consent ("Order") is entered into by Steelcote Manufacturing Company, a Missouri corporation, Niedt Realty Company, a Missouri corporation (hereinafter individually referred to as "Steelcote" and "Niedt Realty", respectively, and collectively as "Respondents"), and the United States Environmental Protection Agency, Region VII ("EPA") pursuant to Section 3013 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, and the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. § 6934 (hereinafter "RCRA").

2. The authority to enter into orders pursuant to Section 3013 of RCRA, 42 U.S.C. § 6934, was delegated by the Administrator of the United States Environmental Protection Agency to the Regional Administrator of EPA Region VII, by EPA Delegation No. 8-20, dated March 6, 1986.

3. By entering into this Order, Respondents admit the jurisdiction of EPA to issue this Order, agree to undertake all actions provided for herein, and consent to be bound by the requirements set forth herein.

4. Nothing in this Order shall be construed as or deemed to be an admission of responsibility, fault, or liability by Respondents in connection with the subject matter of this Order.

II. PARTIES BOUND

5. This Order shall apply to and be binding upon Respondents and their successors and assigns.

6. No change in Respondents' corporate status or change in the ownership or operation of the Facility (as defined below) shall alter Respondents' obligations hereunder.

7. Respondents shall provide a copy of this Order to all contractors, subcontractors, consultants, and laboratories retained to conduct any work herein called for on or before the date of such retention and shall condition all such contracts on compliance with the terms of this Order.

8. Respondents shall give notice of this Order to any successor in interest prior to transferring ownership or operation of the Facility and shall notify EPA at least thirty (30) days prior to any such transfer.

III. STATEMENT OF PURPOSE

9. The objectives of the parties in entering into this Order are to conduct such monitoring, testing, analysis, and reporting with respect to hazardous waste that is present at, or that has been released from, the Facility, as is necessary to ascertain the nature and extent of any hazard to human health or the environment presented by the presence or release of such hazardous waste.

IV. FINDINGS OF FACT

10. Niedt Realty is a corporation organized and existing pursuant to the laws of the State of Missouri.

11. Niedt Realty is the owner of certain real property located at One Steelcote Square (formerly known as 3418 Gratiot Street) in St. Louis, Missouri (the "Real Property").

12. Steelcote is a corporation organized and existing pursuant to the laws of the State of Missouri.

13. Steelcote is the owner of improvements located at the Real Property (the "Improvements").

14. The Real Property and Improvements together constitute the Facility.

15. Steelcote engages in the business at the Facility of manufacturing industrial maintenance and architectural coatings for industrial and professional purposes and manufacturing swimming pool products and marine coatings for retail purposes.

16. Steelcote, as a result of activities described in Paragraph 15, generates hazardous waste as defined in Section 1004(5) of RCRA, 42 U.S.C. § 6903(5).

17. On or about August 15, 1980, Steelcote notified EPA, pursuant to Section 3010(a) of RCRA, 42 U.S.C. § 6930(a), that it generated hazardous waste listed as D001, K078, U220, and U239 as defined at 40 C.F.R. §§ 261.21, 262.32 and 261.33. Steelcote was assigned EPA Identification Number MOD006275036 for the Facility.

18. Hazardous wastes, which are generated at several areas within the Facility, are stored in various satellite and main storage areas onsite.

19. On or about August 29, 1989, EPA conducted a Compliance Evaluation Inspection ("CEI") at the Facility. As a

result of this inspection it was ascertained that xylene, toluene and methyl ethyl ketone were also generated at the Facility. Xylene is listed as a hazardous waste in 40 C.F.R. § 261.31, and has the EPA hazardous waste number F003. Toluene and methyl ethyl ketone are listed as hazardous wastes in 40 C.F.R. § 261.31, and have the EPA hazardous waste number F005.

20. During a CEI conducted on March 6, 1991, EPA noted several areas of stained soils, ruptured drums, and apparent releases of paint-related waste in the south outside courtyard. EPA observed an equipment access hole in the floor on the east side of the distillation room which bore evidence of past releases of paint-related materials. The inspector also noted stained floors and evidence of spills in other areas of the Facility.

21. During the CEI of March 6, 1991, EPA observed the location of a December 21, 1990 removal of an underground storage tank which had held solvent since 1971. Steelcote produced sampling results for the soil surrounding the underground tank. These results confirm soil contamination by 14.3 parts per million (ppm) toluene, 65.9 ppm ethyl benzene and 305 ppm xylene.

V. CONCLUSIONS OF LAW

22. Respondent Steelcote Manufacturing Company is an "owner" and "operator" of the Facility as referred to in Section 3013(a) of RCRA, 42 U.S.C. § 6934(a), and defined at 40 C.F.R. § 260.10.

23. Respondent Niedt Realty Company is an "owner" of the Facility as referred to in Section 3013(a) of RCRA, 42 U.S.C. § 6934(a), and defined at 40 C.F.R. § 260.10.

24. The Real Property and Improvements are a "facility" or "site" as referred to in Section 3013(a)(1) of RCRA, 42 U.S.C. § 6934(a)(1), and as "facility" is defined at 40 C.F.R. § 260.10.

VI. DETERMINATIONS

25. Based upon the foregoing Findings of Fact and Conclusions of Law, pursuant to Section 3013 of RCRA, 42 U.S.C. § 6934, the Regional Administrator has determined that:

a. "Hazardous waste", as defined by Section 1004(5) of RCRA, 42 U.S.C. § 6903(5), is present at, or has been released from, the Facility;

b. The presence of hazardous waste at, or the release of hazardous waste from, the Facility may present a substantial hazard to human health or the environment; and

c. The monitoring, testing, analysis, and reporting required to be conducted by Respondents pursuant to this Order is reasonable to ascertain the nature and extent of any such hazard.

VII. ORDER

26. Pursuant to Section 3013 of RCRA, 42 U.S.C. § 6934, and in order to ascertain the nature and extent of any hazard to human health or the environment at the Facility, it is hereby AGREED TO BY THE PARTIES AND ORDERED that Respondents shall, within thirty (30) calendar days of the effective date of this Order, submit a written Proposal to EPA describing the

monitoring, testing, analysis, and reporting that Respondents propose to perform in order to ascertain the nature and extent of the hazard, if any, that may be presented to human health or the environment by any hazardous waste that is present at, or has been released from, the Facility. Respondents are hereby ORDERED to implement such Proposal upon receipt of written approval from EPA. Such Proposal shall contain, but is not limited to, the following:

a. A plan incorporating a phased approach for determining whether hazardous wastes have leaked or are leaking from any past or present storage areas at the Facility, including above ground and underground storage tanks. The focus of this plan shall be the contaminants of concern ("COCs"). The COCs are those hazardous wastes and those hazardous constituents listed in Appendix VIII of 40 C.F.R. Part 261 that are present in materials, or degradation products of materials, used or produced by Steelcote. This plan shall provide, and include a timetable, for the subsurface investigation of the Facility which shall include soil sampling and installation of a groundwater monitoring program, including proposals as to locations, depth, and construction thereof, designed to monitor groundwater elevation and water quality.

b. A plan and timetable for the determination of the horizontal and vertical permeabilities of the uppermost aquifer and the nature of the aquitards, or barriers, including a determination of the direction and velocity of groundwater flow

in the uppermost water-bearing zones in the area likely to be affected by migration of COCs from the Facility. The plan shall consider means to determine areas of discharge and recharge of groundwater in all areas likely to be affected by the migration of hazardous wastes from the Facility.

c. A sampling and analysis plan for monitoring groundwater at or near the Facility which describes analysis parameters, frequency of sampling, and procedures and quality assurance measures for sampling and analyzing COCs. The plan shall provide that groundwater be sampled and analyzed at least quarterly for one year. The plan shall also provide for analysis of all hazardous constituents contained in Appendix VIII of 40 C.F.R. Part 261 for at least one of the quarterly sampling periods.

d. A plan and timetable to collect soil samples of appropriate size, depth, and location to determine the nature and extent of contamination of the surface and of the soil column above the groundwater table at the Facility by hazardous waste.

e. A plan, including timeframes, for determining the extent of any hazard presented by hazardous waste that may have been released to drainage ditches, surface waters, or sediments at the Facility. This plan shall specifically include sampling of water, sediment, and soils, both on and off-site (if necessary), sufficient to document the extent of contamination by hazardous wastes that may have resulted from past events such as precipitation and resulting run-off.

f. A Quality Assurance and Quality Control (QA/QC) plan for the performance of all sampling and analysis under the Proposal, which shall include as an appendix the QA/QC plan of each contract laboratory used during the investigations required by this Order. Further, the Proposal shall include the procedures by which Respondents will maintain, verify and record the chain of custody of all samples.

g. A schedule for the performance of all work required by this Order, beginning with the point in time EPA approves the Proposal. In no event shall the time from the initiation of the EPA-approved Proposal to the submittal of a final report exceed fifteen (15) months.

h. A schedule for the submission of the results of all sampling, testing and analysis to EPA in a complete and expeditious manner.

27. Upon completion of its review of the Proposal, EPA will notify Respondents that it:

- a. approves the Proposal;
- b. approves the Proposal with conditions; or
- c. disapproves the Proposal.

If the Proposal is disapproved, EPA will provide comments to Respondents regarding the deficiencies in the Proposal. Within fifteen (15) calendar days of receipt of EPA's notification of disapproval, or such other time as agreed to by the parties, Respondents shall resubmit the Proposal to EPA for approval, addressing EPA's comments. Upon receipt of EPA's notification of

approval or notification of approval with conditions, Respondents shall implement the Proposal in accordance with the terms and schedules contained therein.

28. Respondents shall submit monthly reports to EPA describing activities completed each month in implementing the terms and schedules in the EPA-approved Proposal. Respondents shall submit each such monthly report by no later than the 15th day of each calendar month.

VIII. NOTICES

29. The Proposal, and all reports and correspondence submitted by Respondents pursuant to the terms of this Order, shall be submitted to:

Cynthia Hutchison
Environmental Engineer
WSTM/RCRA/RCOM
U.S. Environmental Protection Agency
726 Minnesota Avenue
Kansas City, Kansas 66101

30. All communication and correspondence to Respondents pursuant to this Order shall be directed to:

Douglas A. Niedt, President
Steelcote Manufacturing Company
One Steelcote Square
St. Louis, Missouri 63103

with a copy to:

Alphonse McMahon, Esq.
Peper, Martin, Jensen, Maichel and Hetlage
720 Olive Street, 24th Floor
St. Louis, Missouri 63101

IX. ADDITIONAL WORK

31. EPA may determine that monitoring, analysis, testing, or reporting in addition to that specifically set forth herein or in the approved Proposal is necessary to meet the objectives of this Order and Section 3013 of RCRA, 42 U.S.C. § 6934. If EPA so determines, it will advise Respondents in writing of the nature of the additional tasks and the basis for EPA's determination. Respondents shall either: (i) undertake, perform, and complete all such additional tasks in accordance with the standards, specifications, and schedules determined or approved by EPA, or (ii) advise EPA in writing within five (5) working days of their refusal to undertake the additional tasks and the reasons for such refusal and initiate the dispute resolution process set forth in Section XX of this Order. The time period for initiation of dispute resolution pertaining to additional work shall run from the date Respondents receive written notice from EPA of EPA's determination that additional work is necessary to satisfy the purposes of this Order.

X. ACCESS

31. Respondents shall provide EPA with access to the Facility such that EPA and its authorized representatives are able to enter and move freely about all such property upon which any activities are being conducted or have been conducted pursuant to this Order at all reasonable times for, but not limited to, the following purposes:

a. Inspecting and copying records, files, photographs, operating logs, contracts, and other documents relating to this Order;

b. Reviewing the status of activities being conducted pursuant to this Order;

c. Collecting such samples or conducting such tests as EPA determines are necessary or desirable to monitor compliance with the terms of this Order or to protect human health or the environment;

d. Using sound, optical or other types of recording equipment to record activities which have been or are being conducted pursuant to this Order; and

e. Verifying data and other information submitted by Respondents pursuant to this Order.

32. Respondents shall notify EPA not less than fifteen (15) calendar days prior to any sample collection, well installation, equipment installation, construction, or other field activity specified in the Proposal. Prior to disposal of any samples, Respondents shall give EPA twenty (20) calendar days written notice and the opportunity to take possession of such samples.

33. To the extent that any work required by this Order must be done on property not owned or controlled by Respondents, Respondents shall:

a. Identify each such property and the name, address, and telephone number of the current owner of the property and the name, address, and telephone number of the individual with whom

Respondents have communicated regarding access to the property, if different from the current owner.

b. Use best efforts to obtain written access agreements for each such property within fifteen (15) calendar days of approval by EPA of the Proposal. Such access agreements must be conditioned so as to allow Respondents and EPA access to the property necessary to conduct the actions herein required. For the purposes of this Section, "best efforts" shall include, but are not limited to, the payment of reasonable compensation in consideration of access.

c. No later than thirty (30) calendar days after receipt of EPA approval of the Proposal, Respondents shall notify EPA as to status of its efforts to secure access to such property.

d. In the event that access agreements are not obtained in accordance with the schedule contained in the Proposal, Respondents shall notify EPA in writing within ten (10) calendar days of such failure. In such notification, Respondents shall describe both the lack of agreement and the efforts made to obtain access.

XI. FINANCIAL ASSURANCE

34. Within forty-five (45) days of the effective date of this Order, Respondents shall submit to EPA a cost estimate for implementation of this Order. Said cost estimate shall include direct and indirect capital costs, operation and maintenance costs, and any other costs attributable to implementation of the

requirements of this Order.

35. Within sixty (60) days of the effective date of this Order, Respondents shall submit to EPA documentation of financial assurance in the amount equal to the cost estimate submitted pursuant to Paragraph 35 of this Section to guarantee completion of the work required pursuant to this Order. Such financial assurance shall be in any one or a combination of the following and shall be consistent with the provisions of this Order and 40 C.F.R. Part 264, Subpart H:

- (a) A performance or surety bond;
- (b) A letter of credit;
- (c) A trust fund; or
- (d) A guarantee to perform the work set forth in the Proposal approved by EPA by one or more parent corporation or subsidiary, or by one or more unrelated corporations that have a substantial business relationship with at least one of the Respondents.
- (e) A demonstration that the Respondents satisfy the requirements of 40 C.F.R. § 264.143(f).

36. In the event that Respondents fail to perform the work under this Order (after exhausting the procedures under Section XX (Dispute Resolution), if invoked), EPA may, three (3) days after providing notice to Respondents, undertake to complete such tasks, utilizing the proceeds of the foregoing financial assurance.

XII. RECORD PRESERVATION

37. Respondents shall, without regard to any document retention policy to the contrary, preserve during the pendency of this Order and for a minimum of six (6) years after its termination, all records and documents in their possession, custody, or control which relate in any way to work performed pursuant hereto and which have not previously been submitted to EPA. At the end of this six-year period, Respondent shall notify EPA at least sixty (60) calendar days prior to the destruction of any such record or document. Respondents shall, if requested by EPA, provide to EPA the records or documents or copies thereof.

XIII. CONFIDENTIAL BUSINESS INFORMATION

38. Respondents may assert a business confidentiality claim covering all or part of the information submitted pursuant to this Order. The information covered by such a claim will be disclosed by EPA only to the extent and by the procedures specified in 40 C.F.R. Part 2, Subpart B. Such a claim may be made by placing on or attaching to the information, at the time it is submitted to EPA, a cover sheet, stamped or typed legend, or other suitable form of notice, employing language such as "trade secret," "proprietary," or "company confidential." Allegedly confidential portions of otherwise non-confidential documents should be clearly identified and may be submitted separately to facilitate identification and handling by EPA. If confidential treatment is sought only until a certain date or the occurrence of a certain event, the notice should so state. If no

such claim accompanies the information when it is received by EPA, it may be made available to the public without further notice to Respondents.

XIV. OTHER APPLICABLE LAWS

39. All actions required to be taken pursuant hereto shall be undertaken in accordance with the requirements of all applicable local, state and federal laws and regulations, including, but not limited to, any permitting or licensing requirements.

XV. OPPORTUNITY TO CONFER

40. Respondents may confer with EPA at any time prior to submittal of the Proposal. After submittal of the Proposal, Respondents will be afforded an opportunity to confer with EPA on a date specified by EPA to discuss the terms of the Proposal. Following this conference and after review, modification (if any), and approval of the Proposal by EPA, Respondents shall forthwith conduct, carry out and implement the monitoring, testing, analysis, and reporting requirements described in the Proposal according to its approved terms and schedules.

XVI. INDEMNIFICATION OF THE UNITED STATES

41. Respondents agree to indemnify and save and hold the United States Government, its agencies, departments, agents, and employees, harmless from any and all claims or causes of action arising from or on account of acts or omissions of Respondents or their officers, employees, receivers, trustees, agents, contractors, subcontractors, or assigns, in carrying out any

activities pursuant to this Order. EPA is not, and shall not be represented to be, a party to any contract entered into by Respondents to carry out activities pursuant to this Order.

XVII. LIABILITY

42. Subject to the dispute resolution provisions of Section XX hereof, if EPA determines that Respondents are not able to conduct the activities required by this Order in a satisfactory manner, or to conduct the activities contained in the approved Proposal, or if any actions carried out by Respondents in the performance of any work hereunder are deemed unsatisfactory, then EPA may conduct such actions deemed reasonable by EPA to ascertain the nature and extent of any hazard at the Facility presented by the presence or release of hazardous waste.

43. Respondents may then be ordered to reimburse EPA for the costs of such activity pursuant to Section 3013(d) of RCRA, 42 U.S.C. § 6934(d). If Respondents fail or refuse to comply with the terms of this Order, EPA may commence a civil action to require compliance with the Order and to assess a civil penalty, not to exceed Five Thousand Dollars (\$5,000) per Respondent, for each day during which such failure or refusal occurs.

XVIII. EFFECTIVE DATE AND SUBSEQUENT MODIFICATION

44. The effective date of this Order shall be the date it is signed by the Director of the Waste Management Division, EPA Region VII.

45. This Order may be amended by mutual agreement of EPA and Respondents. Any such amendments shall be in writing and shall be effective when such amendments are signed by the Director of the Waste Management Division, EPA Region VII.

46. The Proposal and any reports, plans, specifications, schedules, and attachments required by this Order shall, upon written approval by EPA, be deemed incorporated into this Order.

47. No informal advice, guidance, suggestions, or comments by the EPA regarding reports, plans, specifications, schedules, and any other writing submitted by Respondents may be construed as relieving Respondents of their obligations to obtain whatever formal approval as may be required by this Order.

XIX. RESERVATION OF RIGHTS

48. Nothing herein shall constitute or be construed as a release from any claim, cause of action, or demand in law or equity that EPA may have against any person, firm, partnership, or corporation for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous substance, hazardous waste, hazardous constituent, pollutant, or contaminant found at, taken to, or taken from the Facility.

49. Notwithstanding compliance with the terms of this Order, EPA may request that Respondents take further action as necessary to respond to releases at the Facility. EPA expressly reserves all rights it may have to request that Respondents perform tasks in addition to those detailed in this Order. EPA

reserves the right to expend and recover funds pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601-9675, as amended ("CERCLA"), and to take any enforcement action pursuant to RCRA, CERCLA, and/or seek injunctive relief, monetary penalties, and/or punitive damages for any violation of law or this Order.

50. Nothing in this Order shall constitute or be deemed a waiver by Respondents of any, and Respondents hereby reserve all, rights, claims, causes of actions, and defenses Respondents may have.

XX. DISPUTE RESOLUTION

51. If Respondents disagree, in whole or in part, with any EPA disapproval or other decision or directive made by EPA pursuant to this Order, Respondents shall notify EPA in writing within ten (10) working days of receipt of EPA's disapproval, decision, or directive. Said notice shall set forth the specific points of the dispute, the position Respondents maintain should be adopted as consistent with the requirements of this Order, the factual and legal bases for Respondents' position, and all matters they deem necessary for EPA's consideration. EPA and Respondents shall then have an additional fourteen (14) calendar days from EPA's receipt of Respondents' objections, or such other period of time as the parties may agree, to attempt to resolve the dispute informally. If agreement is reached, the resolution shall be reduced to writing, signed by each party and incorporated into this Order. If the parties are unable to reach

agreement within this period of informal discussion, Respondents may submit their position in writing to the Director of the Waste Management Division of EPA Region VII (the "Division Director"), within ten (10) calendar days thereafter. EPA will then have ten (10) calendar days to reply to Respondents' position. Other than for routine, periodic reports, neither party shall engage in ex parte communications with the Division Director regarding the basis of the dispute subsequent to the submission of written positions and prior to the Division Director's decision resolving the dispute. The Division Director will provide a written statement of his or her decision regarding the disputed matter to the parties. The decision of the Division Director shall be binding on the parties and shall be incorporated herein.

52. Invoking the dispute resolution procedure described herein shall not excuse, toll, or suspend any compliance obligation or deadline required pursuant to this Order during the pendency of the dispute resolution process other than the obligation or deadline subject to dispute resolution or those agreed by EPA to be directly related thereto.

53. Notwithstanding any other provision of this Order, no action or decision by EPA pursuant to this Order, including without limitation decisions of the Division Director, shall constitute final agency action giving rise to any rights to judicial review prior to EPA's initiation of judicial action to compel Respondents' compliance with the requirements of this Order.

XXI. FORCE MAJEURE

54. Respondents shall perform the requirements of this Order within the time limits set forth herein, unless the performance is prevented or delayed by events which constitute a "force majeure." A force majeure is defined as any event arising from causes not foreseeable and beyond Respondents' control, including their consultants and contractors, which could not be overcome by due diligence and which delays or prevents performance by a date required by this Order. Such events do not include unanticipated or increased costs of performance, changed economic circumstances, normal precipitation events, or failure to obtain federal, state, or local permits.

55. Respondents shall notify EPA in writing within ten (10) calendar days after they become aware of events which Respondents know or should know constitute a force majeure. Such notice shall include an estimate of the anticipated length of delay, including necessary demobilization and remobilization, a description of the cause of the delay and the measures taken or to be taken to minimize the delay, and an estimated timetable for implementation of these measures. Respondents shall adopt all reasonable measures to avoid and minimize the delay. Failure to comply with the notice provision of this Section shall constitute a waiver of Respondents' right to assert a force majeure.

56. If EPA determines that the delay has been or will be caused by a force majeure, the time for performance for that element of work may be extended, upon EPA approval, for a period

equal to the delay resulting from such circumstances. This shall be accomplished through written amendment to this Order pursuant to Section XVIII (Effective Date and Subsequent Modification). Unless expressly provided in such written amendment, such extension shall not alter the schedule for performance or completion of other tasks required by this Order. If EPA and Respondents cannot agree that any delay or failure has been or will be caused by a force majeure, or if there is no agreement on the length of the extension, this dispute shall be resolved in accordance with the dispute resolution provisions of Section XX hereof.

XXII. DELAY IN PERFORMANCE

57. Unless there has been a written modification of a compliance date by EPA or an excusable delay as defined under Section XXI (Force Majeure), if Respondents fail to meet the following requirements of Section VII (Order), Respondents shall pay to EPA the following stipulated penalties. Compliance by Respondents shall include completion of an activity under this Order or any proposal or plan approved under this Order in an acceptable manner and within the specified time schedules in and approved under this Order.

a. For failure to submit the Proposal described in Section VII (Order) hereof within the time specified:

i. \$500 per day for the first through seventh days of noncompliance.

ii. \$1,000 per day for the eighth through thirtieth days of noncompliance; and

iii. \$2,000 per day for the thirty-first day and each succeeding day of noncompliance thereafter; and

b. For failure to submit a monthly progress report called for in Section VII (Order), Paragraph 28 hereof within the time specified:

i. \$50 per day for the first through seventh days of noncompliance;

ii. \$100 per day for the eighth through fourteenth days of noncompliance; and

iii. \$350 per day for the fifteenth day and each succeeding day of noncompliance thereafter.

58. All penalties shall begin to accrue on the day following the date that complete performance is due or a violation occurs and shall continue to accrue through the final day of noncompliance. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Order.

59. All penalties owed under this Section shall be due within ten (10) working days of receipt by Respondents of written demand by EPA for payment thereof. Interest shall begin to accrue on the unpaid balance at the end of this ten-day period at the rate established by the Department of the Treasury pursuant to 31 U.S.C. § 3717 and 4 C.F.R. § 102.13. Interest will accrue on the unpaid balance until such penalties and

interest have been paid in full and will be compounded annually.

60. All penalties shall be paid by certified or cashier's check made payable to the Treasurer of the United States, and shall be remitted to:

Mellon Bank
EPA Region VII
(Comptroller Branch)
P.O. Box 360748M
Pittsburgh, Pennsylvania 15251

61. All payments shall reference Respondents' names and addresses and the EPA docket number, and shall indicate that they are in payment of stipulated penalties. A copy of the transmittal of payment shall concurrently be sent to the EPA contact specified in Section VIII (Notices) hereof.

62. Respondents may dispute EPA's right to the stated amount of penalties by invoking the dispute resolution procedures of Section XX hereof. Penalties shall accrue but need not be paid during the dispute resolution period. Penalties shall be paid when the dispute is resolved by agreement or by a decision of EPA pursuant to the dispute resolution procedures of Section XX hereof.

63. The stipulated penalties set forth in this Section XXII do not preclude EPA from pursuing any other remedies or sanctions which may be available to EPA by reason of Respondents' failure to comply with any of the requirements of this Order, nor shall payment of said penalties relieve Respondents of the responsibility to comply with this Order.

XXIII. ENFORCEMENT

64. Respondents are hereby advised that the Regional Administrator of EPA Region VII may commence a civil action against any person who fails or refuses to comply with this Order. Respondents are hereby advised that such action would be brought in United States District Court pursuant to 42 U.S.C. § 6934(e) to require compliance with this Order and to assess a civil penalty not to exceed Five Thousand (\$5,000.00) dollars, per Respondent, for each day during which such failure or refusal occurs.

65. If the Regional Administrator of EPA Region VII determines that Respondents are not able to undertake or satisfactorily complete any action required by this Order or deems any such action carried out by Respondents to be unsatisfactory, then he may undertake or authorize a state or local authority or other person to undertake and complete any such action and enter an Order requiring Respondents to reimburse EPA or other authority or person for the cost thereof.

XXIV. TERMINATION AND SATISFACTION

66. The provisions of this Order shall be deemed satisfied by Respondents on written notice from the EPA that Respondents have demonstrated that all of the terms of this Order including any additional work which the EPA may determine to be necessary pursuant to Section IX of this Order, have been completed to the satisfaction of EPA.

STEELCOTE MANUFACTURING CO.,
A Missouri corporation

Date

Douglas A. Niedt
President

NIEDT REALTY COMPANY
A Missouri corporation

Date

Douglas A. Niedt
President

Date

David A. Hoefer
Assistant Regional Counsel
Environmental Protection Agency
Region VII

IT IS SO ORDERED:

Date

Morris Kay
Regional Administrator
Environmental Protection Agency
Region VII